GOVERNMENT BUSINESS—(*Resumed*).

V. Bill further to amend the Indian Penal Code as in force in Mysore.

THE FIRST MEMBER OF COUNCIL stated that the Bill could not be taken up on the second day of the session on account of the rule requiring ten days' notice, that, as the rule had since been modified, (*vide* Notification dated 15th October 1929, printed as an Appendix) the consideration of the Bill could now be taken up with the consent of the Assembly, and he hoped that the House would agree to the principles of the Bill being discussed.

MR. RAMADOSS took exception to this procedure.

THE FIRST MEMBER OF COUNCIL observed that the new rule had come into operation and that it had to be followed.

THE SECRETARY TO GOVERNMENT, LAW DEPARTMENT, then explained the general principles of the Bill (*vide* Proceedings of 15th October 1929).

MR. P. SUBBARAMA CHETTY observed that the statement of general principles furnished to the members itself showed that the existing law was defective. Under such circumstances he wanted to know how certain officials of the Palace were tried and punished recently.

THE LAW SECRETARY replied that that matter need not be discussed. The main point was that when it was known that any provision of law was defective, it was up to the House to see that it was rectified at once.

KHAN BAHADUR MAHOMED ABBAS KHAN desired to know what classes of officers were referred to in the amendment—whether they included pensioned and temporary officers also.

THE LAW SECRETARY, in reply, drew the attention of the member to the wording of the proposed amendment, which was as follows:—

"Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Palace, or to investigate or to report on matter affecting the pecuniary interests of the Palace, or to make, authenticate or to keep any document relating to the pecuniary interests of the Palace, and every officer in the service or pay of the Palace."

MR. S. VENKATESAIYA thereupon stated that the object of the amendment was practically to apply to the officials

of the Palace the pains and penalties which were applicable to regular officials of Government. The Service Regulations gave certain privileges to Government officials in matters concerning fixity of tenure, fixity of pay, leave, etc. Unless and until the same privileges were extended to Palace employees also, he did not see the equity in applying to them only the pains and penalties which the Penal Code imposed in respect of Government employees.

THE THIRD MEMBER OF COUNCIL replied that Palace service was also regulated by certain well-defined rules.

KHAN BAHADUR MAHOMED ABBAS KHAN wanted to know the significance of the words "service or pay of the Palace."

THE THIRD MEMBER OF COUNCIL replied that the wording of the amendment was based on Clause 9 of Section 21 of the Indian Penal Code and that the details as to the form, etc., of the amendment might be considered in the select committee. He added that the main point was to include employees of the Palace also in the definition of Public Servants.

KHAN BAHADUR MAHOMED ABBAS KHAN enquired whether the amendment was intended to apply only to officers of Government lent to the Palace or to all people in the employ of the Palace.

THE THIRD MEMBER OF COUNCIL replied that it was intended to apply to both. In the recent case referred to by Mr. Subbarama Chetty, the officials of the Palace involved were treated as ordinary persons for purposes of the trial and not as public servants.

MR. H. C. DASAPPA apprehended that just as the Palace employees were sought to be brought within the purview of the Penal Code, even purely private service such as in Mills might be included later on.

THE THIRD MEMBER OF COUNCIL replied that there was no such intention. In the present case, the classes of officers whom it was proposed to bring under the operation of the proposed clause were persons in charge of the pecuniary interests of the Palace. The State was particularly interested in seeing that such people discharged their duties properly. This was quite different from applying the law to persons in purely private employ.

MR. H. C. DASAPPA feared that the measure proposed would be difficult of enforcement, as there were many practical difficulties. He was not quite sure whether the Palace was agreeable to the proposed legislation. Secondly,

he was doubtful whether Palace servants could be brought within the meaning of ' Public Servants,' specially when they were not paid by the State.

THE THIRD MEMBER OF COUNCIL observed that this legislation was proposed at the instance of the Palace and that there was absolutely no doubt about the competency of the legislature to bring Palace employees within the operation of the provisions of the Penal Code.

MR. H. C. DASAPPA agreed that this was a desirable legislation, but he failed to understand how the Palace employees could be treated as public servants for purposes of trial under the Indian Penal Code. He referred, for instance, to the Household Staff of the Palace, consisting of so many servants, Body Guards, gardeners, etc., and asked whether legislation to include them also in the definition of the term 'Public Servants ' had to be considered. He said that under the definition given in the amendment, the whole Palace staff would be included.

THE THIRD MEMBER OF COUNCIL said that Palace servants might for various purposes be regarded as on the same footing as Government servants. Their salaries too were to a great extent met from State revenues, though indirectly.

MR. H. C. DASAPPA said that anyhow the matter required very serious consideration. Supposing that a head of a department maintained private servants and paid them out of the salary he got from the State revenues, he asked whether, on the analogy mentioned by the Third Member, these private servants could be brought under the term ' Public Servants ' simply because their pay was indirectly met from State revenues

THE THIRD MEMBER OF COUNCIL remarked that this analogy did not hold.

The main difficulty, in the opinion of MR. DASAPPA, was whether Government could legislate for a third party in the way proposed in the amendment.

THE THIRD MEMBER OF COUNCIL did not see any difficulty and said that it would all depend upon the definition of the expression ' Public Servant.'

MR. C. NARASIMHAIYA wanted to know whether the Palace and Government services were mutually interchangeable so as to enable the legal provisions relating to the one being made applicable to the other, and secondly, whether Palace employees would be above criticism in the Constitutional Houses.

THE SECOND MEMBER OF COUNCIL observed that that was a fallacious reasoning. He quoted the instance of the Army which came under the term 'Public ervice' Sand yet was above criticism in the Constitutional Houses.

MR. C. NARASIMHAIYA asked whether Palace service could be made subject to the same disabilities as those of the public service also, and expressed the opinion that it was better to enact a special law concerning Palace employees instead of including them within the purview of the Penal Code as proposed.

THE SECOND MEMBER OF COUNCIL observed that on the same analogy a separate Civil Law would have to be enacted for the Palace, which was not practicable.

MR. C. NARASIMHAIYA replied that that was far from his intention. All that he meant was that special legislation might be enacted for application to those in Palace service so far as offences coming under Sections 162 to 171 of the Penal Code were concerned.

THE THIRD MEMBER OF COUNCIL explained that even in the case of servants of a company or a private employer there were certain responsibilities, rights, duties and liabilities of employer and employee. When Government were the employers, certain special rights and liabilities were attached to the employees in the interests of the Administration, because of their special responsibilities. He added that the underlying idea of the amendment was to protect and hold accountable the servants of the Palace in the same way as those of the Government.

Replying to a question by Mr. Narasimhaiya, the Third Member of Council said that there was no idea of extending the benefit of similar legislation to the Jahgirdars of Yelandur and Sringeri.

MR. H. C. DASAPPA said that the proposal before the House was to make Sections 162 to 171 of the Penal Code applicable to Palace servants. These Sections referred to *offences committed by public servants* and the manner of dealing with them for such offences. As against these, Chapter X of the Code prescribed aggravated punishments to those committing *offences against public servants*. If the Sections dealing with offences committed by public servants were applied to servants of the Palace, the member said that it was only fair to make the provisions of Chapter X applicable to Palace Servants also so that, side by side with the liabilities and punishments of Government servants which they would hereafter be subjected to, they would also be

entitled to enjoy the privileges attaching to Government servants.

THE THIRD MEMBER OF COUNCIL agreed that whatever consequences were implied in the definition would certainly follow.

MR. H. C. DASAPPA said that if an ordinary gardener of the Palace did not allow a stranger to enter the garden and if the stranger forced his way into it, then, his action would be tantamount to obstructing a public servant, because the definition included all servants. This he thought was a matter that should be further examined.

THE THIRD MEMBER OF COUNCIL replied that the question whether the definition was too inclusive would be examined carefully at a later stage. All such details would naturally come up for scrutiny in the Select Committee. The only point for the consideration of the House was whether it was in favour of the general principle that this kind of special protection which was given to Government in respect of Government servants was called for in the case of the Palace in respect of Palace servants also.

MR. BELUR SRINIVASA IYENGAR stated that there were two objections to bringing Palace employees under the operation of Section 21 of the Penal Code. To bring a person under the category of public servants under Section 21 of the Penal Code, one of two tests was necessarily to be fulfilled: (i) that he should be doing public service, and (ii) that he should be getting his pay from Government. Judged by these tests, he said, Palace servants did not come within the definition of public servants. Besides, the term 'Palace' was not defined in the Penal Code. The measure was to be enacted by the Legislature, but the classes of persons sought to be dealt with were not under its control; they were under the control of the Palace—an agency which was perhaps more powerful than the Legislature itself. He suggested that a better way of achieving the object in view was to enact a special law as in the case of the Kolar Gold Fields in respect of unlawful possession of gold, etc. It was also neither wise nor proper to seek to bring Palace employees, who were neither Government servants nor capable of exercising any public functions, under the operation of the Penal Code. Their functions were entirely private in respect of which the Legislature had absolutely no administrative control. Palace employees were not paid by Government but received their salaries from the Palace Civil List which was a non-votable item. In these

circumstances, he said, it would be *ultra vires* to enact a clause of the kind proposed.

THE SECOND MEMBER OF COUNCIL replied that the arguments urged did not support the contention of Mr. Srinivasa Iyengar. There were so many other Departments which were beyond the pale of discussion and criticism in the Constitutional Houses but were still subject to legislation such as, for instance, the Army.

THE THIRD MEMBER OF COUNCIL pointed out that the proposed legislation was anything but *ultra vires*.

MR. P. SEETHARAMAIYA considered that there were very many practical difficulties in enforcing a law of this kind. Granting that the interests of the Palace required to be protected as those of the Government, he asked whether there were not others who deserved similar protection.

With regard to the need for protecing Palace interests, he pointed out that a legislation like this would adversely affect not only the interests of private parties but also those of the Palace itself; for instance, the Palace might own large extents of land, owners of adjoining lands might come into conflict with persons interested in the management of Palace lands, in connection with disputes over water supply, sharing of crops, and other similar questions. Then, it would be open to the Palace immediately to arrest the private party for assault on a public servant. That, he thought, would be unfortunate.

MR. E. KRISHNAPPA said that it was necessary to define the terms 'Palace' and 'Palace officer.'

THE THIRD MEMBER OF COUNCIL expressed his gratefulness to the members for the various points of view put before Government in regard to the proposed legislation. He said that although it was not possible to say that Palace service was the same as Government service, yet, there were several things in common between the two services. He assured the House that the details of the measure would be very carefully examined in the Select Committee.

On this assurance, the House agreed to the general principles of the Bill.

PRIVATE BILL—(*Resumed.*)

Statement furnished by Mr. Nilgiri G. Sanjeeviah of the general principles of a Bill to amend the Civil Procedure Code which he proposed to introduce in the Legislative Council.